



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live.

Mitchell E. Daniels, Jr.
Governor

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Commissioner

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MEMORANDUM

TO: Gary Powdrill, Chairman
Water Pollution Control Board

FROM: Thomas W. Easterly, Commissioner
Indiana Department of Environmental Management

DATE: December 11, 2007

SUBJECT: Rules to Expire, 327-IAC 11-1 and 327-IAC 11-2, State Environmental Policy

I am writing to provide you and the other members of the Water Pollution Control Board with the reasons that caused IDEM to allow 327 IAC 11-1, Environmental Assessment; Activities of State Agencies, and 327 IAC 11-2, Environmental Impact Statement; Activities of State Agencies to expire on January 1, 2008 under the sunset provisions. I believe that the rules do not add value to the protection of the environment. These rules were not included in the IC 13-14-9.5 First Notice of Readoption, LSA Document #07-553.

327 IAC 11-1 is intended to fulfill the statutory requirement in IC 13-12-4 "The air pollution control board, water pollution control board, and solid waste management board shall by rule define the actions that constitute a major state action significantly affecting the quality of the human environment." Instead of directly addressing this requirement, the rule states:

"It is not within the scope of this rule (327 IAC 11-1) to identify before the fact which major state agency actions significantly affect the quality of the human environment. The specific determination must be developed for each agency action by preparing an environmental assessment as set forth in 327 IAC 11-1-5."

327 IAC 11-1-5 is a three page checklist form. This form is filled out for many State actions including all rules adopted by this Board. There is no review of the contents of the form and I have yet to find anyone who remembers a form that resulted in a determination that an action was "a major state action significantly affecting the quality of the human environment."

327 IAC 11-2 provides procedures for an environmental quality review of state agency plans or activities that affect or may affect the environment of the state prior to final adoption or implementation of the plan or activity, including a formal review by IDEM. This part of the regulation does not appear to address any specific statutory requirement.

IDEM has found that the implementation of these rules has proven ineffective for the purposes established in IC 13-12-4-1, Sec. 1. which are:

- (1) To declare a state policy that will encourage productive and enjoyable harmony between humans and the environment.
- (2) To promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans.
- (3) To enrich the understanding of the ecological systems and natural resources important to Indiana.

IDEM believes these rules do not work and add only cost, not value to the environmental decision making process. Therefore, IDEM intended to allow the rules to expire. Due to the interest expressed in this action by the Water Pollution Control Board members, I would like to discuss the options available to address these rules with you at your December 12, 2007 meeting. Further information on the legal basis for the requirements follows:

327 IAC 11-1 and 327 IAC 11-2 are authorized under IC 13-12-4 (1996 recodification of IC 13-1-10) regarding the environmental impact of actions by state agencies. Specifically IC 13-12-4-5 directs that "To the fullest extent possible:

- (1) the policies, rules, and statutes of the state shall be interpreted and administered in accordance with the policies set forth in this chapter; and
- (2) all state agencies shall do the following:
 - (A) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making that may have an impact on the environment.
 - (B) Identify and develop methods and procedures that will ensure that unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations.
 - (C) Include in every recommendation or report on proposals for legislation and other major state actions significantly affecting the quality of the human environment a detailed statement by the responsible official on the following:
 - (i) The environmental impact of the proposed action.
 - (ii) Any adverse environmental effects that cannot be avoided should the proposal be implemented.
 - (iii) Alternatives to the proposed action.
 - (iv) The relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity.
 - (v) Any irreversible and irretrievable commitments of resources that would be involved if the proposed action should be implemented.

Before making a detailed statement, the responsible state official shall consult with and obtain the comments of each state agency that has jurisdiction by law or

special expertise with respect to any environmental impact involved. Copies of the statement and the comments and views of the appropriate federal, state, and local agencies that are authorized to develop and enforce environmental standards shall be made available to the governor and to the public and must accompany the proposal through the agency review processes. The air pollution control board, water pollution control board, and solid waste management board shall by rule define the actions that constitute a major state action significantly affecting the quality of the human environment.

(D) Study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.

(E) Recognize the long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize state cooperation in anticipating and preventing a decline in the quality of the environment.

(F) Make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

(G) Initiate and use ecological information in the planning and development of resource oriented projects."

cc: Water Pollution Control Board Members

